

United States District Court  
Eastern District of California

John C. Montue,

Petitioner,

vs.

Teresa A. Schwartz, et al.,

Respondents.

No. Civ. S 04-2663 GEB PAN P

Order

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December 17, 2004, petitioner filed a petition for habeas corpus. April 13, 2005, the court served respondent and ordered a response.

April 15, 2005, petitioner filed a petition for habeas corpus. The clerk of court construed the pleading as amended petition for habeas corpus and filed the documents in this action. April 28, 2005, the court ordered the clerk to serve the amended petition and respondent to respond.

1 April 28, 2005, petitioner filed a letter explaining he  
2 intended his April 15, 2005, pleading to commence a new action  
3 challenging his underlying conviction, while the December 17,  
4 2004, petition challenges his parole status. The two cases are  
5 unrelated.

6 Good cause appearing, the court hereby orders that:

7 1. The April 28, 2005, order is vacated. Respondent shall  
8 respond to the December 17, 2004, petition as directed in the  
9 court's April 13, 2005, order.

10 2. The clerk of court shall open a new habeas corpus action  
11 and randomly assign it to a district judge and magistrate judge.  
12 In the new action the clerk shall file the April 15, 2005,  
13 pleading and docket it as "petition for habeas corpus," the April  
14 18, 2005, motion to proceed in forma pauperis, and a copy of this  
15 order.

16 Dated: May 10, 2005.

17 /s/ Peter A. Nowinski

18 PETER A. NOWINSKI

19 Magistrate Judge  
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